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IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

No. C. R. A. 1988.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

vs.

ABRAHAM S. RATNER,
Defendant and Appellant.

STATEMENT OF JURISDICTION ON APPEAL.

In compliance with Rule 12 of the Supreme Court of the United States the Appellant herewith presents his statement of jurisdiction on Appeal.

A.

The statutory provisions which sustain jurisdiction are Section 237 of the Judicial Code (28 U. S. C. A. 344 as amended by Act of January 31, 1928, Chap. 14, 45 Stat. 54, and Act of April 26, 1928, Chap. 440, 45 Stat. 466).

B.

The Fourteenth Amendment to the Constitution of the United States is involved in said decision, the pertinent portions of which are here involved are:

"• • • nor shall any state deprive any person of life, liberty or property without due process of law, nor

deny to any person within its jurisdiction the equal protection of the laws".

C.

The Judgment and Orders in this case were rendered by the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, on December 9th, 1943, and the Order denying Appellant's petition for rehearing, made on December 30th, 1943; and by said Orders the said Appellate Department of the Superior Court specifically commented on the United States Constitutional question herein involved and presented and specifically held that said sections 510 and 511 of the Vehicle Code of California did not violate the provisions of the Fourteenth Amendment, or any part of the United States Constitution.

That the said Appellate Department of the Superior Court is the Highest Court in the State of California to which an appeal could be taken from a judgment or order of the said Municipal Court of the City of Los Angeles.

D.

Nature of Case and Ruling Below.

On the 12th day of August, 1943, the City Attorney of the City of Los Angeles filed in the Municipal Court of said city a complaint charging this appellant with a violation of Sections 510 and 511 of the Vehicle Code of California, a misdemeanor, the pertinent portion of which is as follows, to wit:

"• • • on or about the 3rd day of August 1943, at and in the City of Los Angeles, County of Los Angeles, State of California, a misdemeanor, to wit: a violation of Section 510 of the Vehicle Code of the State of California (Speeding) was committed by Abraham S. Ratner • • • who at the time and place last aforesaid

did willfully and unlawfully drive a vehicle, to wit: an automobile upon Sunset Boulevard between Sanborn Ave., and Hillhurst Ave., a highway in said City of Los Angeles, at a faster rate of speed than was then and there reasonable and prudent, having due regard for the traffic on, the surface and width of said highway, and at a speed which then and there endanged the safety of persons and property and at the approximate speed of 40 miles per hour in a zone, district and place where the *prima facie* lawful rate of speed named in Section 511 of the Vehicle Code was 25 miles per hour". * * *

That the said defendant-appellant was duly arraigned on said complaint in said Court and entered a plea of Not Guilty; That thereafter said defendant-appellant moved said Court to strike all or part of said complaint and also to dismiss said complaint on the ground that the said sections 510 and 511 of the Vehicle Code of California are void under the provisions of the State and Federal Constitutions for the reason that said section 510 V. C. is too vague, indefinite and uncertain to properly charge any criminal offense, and said section 511 V. C. attempts to create a crime by presumption of law and require a defendant to prove himself innocent.

That said motions were denied by the Court and the case set for trial. That at the trial of said action the case for the people was stipulated to as follows, by counsel for the people and for the defendant, to wit:

"People's Case: That on or about the 3rd day of August 1943, the defendant Abraham S. Ratner, was the driver of an automobile and did drive said automobile on Sunset Boulevard between Sanborn Avenue and Hillhurst Avenue; Sunset boulevard between said points being a highway in the State of California, City of Los Angeles; that between said streets on Sunset Boulevard Defendant drove his car in excess of 25 miles per hour, to wit:, 40 miles an hour; that said highway

between said points is within the 25 mile zone as designated by correctly and legally erected signs and was within a residential district as defined by the Vehicle Code * * *"

That upon these stipulated facts the People rested and the defendant rested.

That thereupon the Court found the defendant Guilty and sentenced him to pay a fine of $20.00 or serve 5 days in the City Jail.

That within the time allowed by law, an Appeal was taken and effected, to the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles. In this latter Court Defendant-appellant again raised the question of the unconstitutionality of said Code sections 510 and 511 V. C. of California, under the Fourteenth Amendment to the U. S. Constitution.

Said Appellate Department of the Superior Court upheld the constitutionality of both of said Code sections in its original opinion and Order and in Denying a petition for rehearing.

The particular points raised under the Fourteenth Amendment to the Constitution of the United States and denied by said Appellate Department of the Superior Court of the State of California, County of Los Angeles, are these:

I.

Is Section 510 of the Vehicle Code of California in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and particularly the Due Process clause thereof, for the reasons that the provisions of said code section are too vague, indefinite and uncertain to properly charge a criminal offense?

II.

Are the provisions of Section 511 of the Vehicle Code of California violative of the Fourteenth Amendment to the Constitution of the United States, and in particular, the Due Process clause thereof, for the reasons that the provisions of said code section attempt to create a crime by presumption of law, which presumption is not related to the provisions of section 510 of the Vehicle Code of California, which contains the basic speed law of California, and which presumption is illogical, unreasonable and oppressive?

I.

Is Section 510 of the Vehicle Code of California in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and particularly the due process clause thereof, for the reason that the provisions of said code section are too vague, indefinite and uncertain to properly charge a criminal offense?

Section 510 of the Vehicle Code reads as follows:

> "No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent, having due regard for the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property".

The Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, which is the Court of last resort in California for cases of this kind, arising in the Municipal Court of the City of Los Angeles, having affirmed the conviction and sentence of this appellant by said Municipal Court, held, in effect, that the foregoing section was sufficiently definite and certain to be a valid penal statute under the

Fourteenth Amendment to the Constitution of the United States.

No written opinion was rendered by said Court, giving its reasoning in the premises, the Court contenting itself with filing the following memo, to wit: "MEMO. We find no basis for holding that either sec. 510 or sec. 511 of the Vehicle Code of California violates either the Constitution of the State of California or the Constitution of the United States (see: *People* v. *Banat* (1940), 39 Cal. App. (2) 765; *In re Johnson* (1935), 6 Cal. App. (2) 654; *People* v. *Smith* (1939), 36 Cal. App. (2) 748; *People* v. *Bigman* (1940), 38 Cal. App. (2) 773."

The Challenge to the Statute is that it is too vague, indefinite and uncertain to properly charge a crime, since the statute itself fails to define what rate of speed is proper, reasonable or prudent under the varying circumstances on a public highway. Reasonable men would differ as to what constituted proper speed under given circumstances. How can the driver arrive at a correct conclusion, under such vague, indefinite provisions, when he is moving along the highway under constantly changing conditions and must reach that conclusion without time for deliberation. Also, the highway patrol officer at one point on the highway might consider the motorist as doing a good job of driving, while another patrolman of a more careful or cautious temperament might think the motorist was imprudent and driving at an unreasonably fast rate of speed.

The statute in question, to wit: Sections 510 and 511 of the Vehicle Code, is a statewide law and governs all traffic on the streets and highways of California, whether urban or rural. The Court must take judicial notice of the fact that the yardstick of prudent or reasonable driving speed under such indefinite and uncertain statute, would vary with the need for revenue by the various

municipalities through which the motorist must pass. It is a notorious fact that throughout California, and probably other states, the local police Courts presided over by judges appointed by City Councils, many of whom are not attorneys at law, are expected to gather in through traffic speed fines a definite annual revenue which is actually set up in the city budgets.

Furthermore, standards of prudence and reasonableness in speed, are in large measure, like morals, a matter of Geography, in this: that large municipalities vary sharply from the small rural communities in their ideals.

It therefore becomes apparent that whether or not a particular motorist is a criminal driver under given conditions depends on geography, the temperament, whim or caprice of arresting officers, juries, local magistrates or avaricious town councils.

The luckless motorist must balance all of these factors in his mind as he drives along the splendid highways of California, and reach the correct conclusion instantly, or find himself in the toils of the law, though he, himself thinks he is driving prudently and reasonably and is not all conscious of guilt.

The probability of oppression under such indefinite and uncertain statutes governing automobile speeds is much greater than under statutes governing more serious offenses, for the reason that a motorist on an extended trip cannot afford to take the time and incur the expense to defend himself in these matters. Or in the case of local war industries the war workers cannot properly sacrifice the time from their essential war work to attend traffic courts without injury to the War effort.

Furthermore it is most important that the Supreme Court of the United States take jurisdiction of this matter because of the conflict in interpretation by various states as to the Constitutionality of similar legislation under

the Fourteenth Amendment to the Constitution of the United States. For example in Georgia, the Court of last resort, in the case of *Hayes* v. *State*, 11 Georgia App. 769, construing an almost identical automobile speeding statute, has ruled exactly opposite to the rule established in California and in Indiana. In that case the Court makes the following inquiry: "What rate of speed is reasonable and proper? Who should determine the question? What is the test as to the rate of speed which can be employed, AND HOW IS THE DRIVER TO KNOW WHEN HE IS DRIVING AT A RATE OF SPEED PROHIBITED BY THE ACT? Manifestly the question cannot be determined by the CONSEQUENCES WHICH ENSUE from driving an automobile. THE LAW MUST SO DEFINITELY AND CERTAINLY DEFINE THE OFFENSE THAT A PERSON OF REASONABLE UNDERSTANDING CAN KNOW AT THE TIME OF THE COMMISSION OF THE ACT, THAT THE LAW IS BEING VIOLATED. One Jury might say that a certain rate of speed was reasonable and proper; another jury might reach exactly the opposite conclusion from exactly the same facts and circumstances". The Georgia Court therefore ruled that the Act was unconstitutional as being too vague and indefinite.

We consider this Georgia case exceptionally well reasoned and logical in interpreting the Fourteenth Amendment.

II.

Is Section 511 of the Vehicle Code of California violative of the Fourteenth Amendment to the Constitution of the United States, and in particular the due process clause thereof, for the reason that the provisions of said code section attempt to create a crime by presumption of law, which presumption is not related to the provisions of Section 510 of the Vehicle Code of California, which contains the basic speed law of California, and which presumption is illogical, unreasonable and oppressive?

Section 511 of the Vehicle Code sets up various so called "prima facie" speed zones such as the 25 mile zone involved in the instant case, and then reads as follows to wit:

> "The speed of any vehicle upon a highway not in excess of the limits specified in this section, or established as authorized in this code, is lawful, unless clearly proved to be in violation of the basic rule declared in Section 510 hereof; The speed of any vehicle upon a highway in excess of any of the limits specified in this section, or established as authorized in this Code, is prima facie unlawful unless the defendant establishes by competent evidence that any said speed in excess of said limits did not constitute a violation of the basic rule declared in section 510 hereof, at the time, place and under the conditions then existing."

The challenge to this section, especially the second paragraph of it, is that it establishes a presumption of law which, either creates a crime, or establishes the fact that a crime has been committed, and is thus used, not as a legitimate procedural rule, but as an invalid attempt to create an element of substantive law by presumption.

In the quoted section 511 V. C., the presumption seeks to establish the fact that a crime has been committed. Speed alone is not an offense under the substantive part of

the law, to wit: Section 510 Vehicle Code—it is speed *plus other factors.* Therefore the presumption seeks to create these other factors, which are essential to prove that a crime has been committed, under the terms of Section 510 V. C.

There is no rational connection between speed and the condition of the highway or other traffic hazards. Here the presumption that the substantive law was violated, i. e. not speed alone, nor a careful and prudent speed merely, but the law gives the yardstick by which the careful and prudent or prudent and reasonable speed may be ascertained (to wit: conditions of the highway, traffic thereon, etc.), and by that method only. How can speed alone establish a reasonable and rational presumption of the surrounding circumstances and conditions which are an essential part of the crime, to wit: width of the highway, surface of the highway and traffic thereon?

In other words, through the mechanism of this illogical and unreasonable presumption, the prosecution is relieved of the necessity of proving the other essential factors required by section 510 V. C., to wit: that the highway and the width and surface thereof, and the traffic thereon was such as to render the proven speed to wit: 25 miles an hour, unreasonable and imprudent and hazardous to persons and property.

It is conceded that there are numerous decisions holding that a presumption may be legitimately enacted by statute and used by the people or the prosecution to establish certain facts where such facts are peculiarly within the knowledge of a defendant and are very difficult for the prosecution to prove. This is generally called the "rule of convenience" and has been used especially in the alien cases

where the fact of birthplace is only known to defendant, etc.

The instant case however has nothing in common with such cases and there is no reason for applying this rule of convenience to a traffic case where the arresting highway patrolman has a BETTER KNOWLEDGE of all the conditions on the highway and the speed and manner of driving of a defendant motorist, than the defendant himself.

This rule of convenience has never been extended to a traffic case or any other case where the prosecution has as good or better knowledge, and opportunity for knowledge, as a defendant, and it should not be extended to such cases.

The danger of extending the practice of convicting persons by presumption is aptly expressed by Mr. Justice Brandeis, in his dissenting opinion in the case of *Casey* v. *United States*, 276 U. S. at p. 420, to wit: "Once the thumb screw and the following confession made the conviction easy, but that method was crude, and I suppose now would be declared unlawful upon some ground. Hereafter PRESUMPTION is to lighten the burden of the prosecutor. The victim will be spared the trouble of confessing and will go to his cell without mutilation or disquieting outcry".

We submit that it is most important that the Supreme Court take jurisdiction of this case for the reason that it has to do with the even flow of interstate commerce and more people are affected by traffic laws than any other type of criminal statutes.

It is very important that the confusion in the minds of interstate motorists caused by the conflicting decisions in the various states be resolved by the judgment of the Supreme Court. This is especially true during war time when interstate trucks and buses and other vehicles are contributing so greatly to the war effort.

E.

Cases Believed to Sustain Jurisdiction.

Hayes v. *State*, 11 Georgia App. 769, (declaring unconstitutional a motor vehicle Act almost identical with the California Law).

U. S. v. *Reese*, 92 U. S. 214;

Yick Wo v. *Hopkins*, 6 Sup. Ct. Rep. 1070;

James v. *Bowman*, 190 U. S. 141;

Brown v. *State*, 137 Wisconsin 543;

A. B. Small v. *American Sugar Refining Co.*, 267 U. S. 233;

Casey v. *U. S.*, 276 U. S. 276;

Morrison v. *California*, 291 U. S. 82;

People v. *Osaki*, 209 Cal. 169 (An alien land law case containing good discussions of the limits of the "rule of convenience").

Manley v. *Georgia*, 279 U. S. 1;

Western and Atlantic R. R. v. *Henderson*, 279 U. S. 639;

Pacific Gas & Electric Co. v. *Sacramento*, 251 U. S. 22 (Appeal from Intermediate Court where judgment has become final).

We therefore respectfully submit that this appeal be allowed and that the Judgment of the Appellate Department should be reversed.

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